Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 73-7031

JESSE THURMAN FOWLER,
Petitioner

vs.

STATE OF NORTH CAROLINA,
Respondent

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Counsel of Record
For Petitioner:
David E. Kendall
10 Columbus Circle
New York City, N. Y.

To: The Supreme Court of the United States.

Richard A. Heim respectfully moves for an order granting leave to file a brief amicus curiae in the above-entitled case pursuant to the Revised Rules of this Court. Consent of the STATE OF NORTH CAROLINA has been filed herewith. Consent by the attorney for JESSE THURMAN FOWLER has been refused by letter to movant which is filed herewith.

1. Movant is a member of the Bar Association of the State of Connecticut and a practicing criminal law attorney in that state which has a recently enacted statute providing for the penalty of death (Conn. Gen. Statutes 53a-46). Movant has a legal duty to promote justice and improve the legal system as well as to protect and defend the Constitution of the United States. The issues in this case being of such compelling public interest, the movant seeks to execute said duty by functioning as friend of the Court.

2. Movant will brief the following issues:

a) Whether any argument that a death penalty is unconstitutional per se can be reconciled with the several references in the Federal Constitution which seem to imply that such penalty is valid and allowable?

b) Whether a death penalty imposed by a state law which may comply with the decision in Furman vs. Georgia, 408 U. S. 238 (1971) is nonetheless violative of the rights of the people under the 8th and 14th Amendments to the Federal Constitution in spite of any evolving social standards of decency in that such penalty does not fit the constitutionally proper definition of legal punishment implicit in the 8th Amendment, and in that it amounts to a bare, non-corrective forfeiture and as such outside the due process of law mandate, any deterrent effect thereof being only an incidental objective of the law?

c) Whether such penalty violates any fundamental rights retained by the people via the 9th Amendment to the Constitution and whether this Court should consider such issue which may not be presently before the Court on this appeal?

3. Movant expects to be able to assist the Court by presenting written, but not oral unless the Court so directs, arguments and viewpoints on the issues which the parties will not present or adequately present and on questions of law as outlined in paragraph 2 herein which the parties will not present or adequately present as far as movant can discern from communications with them and from reviewing all arguments of Petitioner's counsel of record as set out in the petition for writ of certiorari in DILLARD vs. NORTH CAROLINA, No. 73-6875, petitioner's counsel having informed movant that such arguments are to comprise the major argument thrust in the instant case.

4. The relevancy to the disposition of the case of movant's arguments and proposed questions of law lies in the fact that they pertain to the basic issue of whether any state government can ever constitutionally impose a penalty of death for a crime.

5. Movant expects that his assistance to the Court will be helpful especially in light of the compelling public interest in the outcome of this case.

For the foregoing reason this motion for leave to file brief as amicus curiae should be granted.

Dated November 8, 1974

Richard A. Heim
Counselor at Law
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Vernon, Connecticut